<u>REMARKS</u>

In the Office Action mailed from the United States Patent and Trademark Office on September 16, 2005, the Examiner rejected claims 1-7, 12-21, 23 and 26-29 under 35 U.S.C. 102(e) as being anticipated by Landau et al (United States Patent Application Publication No. 2002/0082919, hereinafter "Landau"), rejected claims 8-10, 22 and 24 under 35 U.S.C. 103(a) as being unpatentable over Landau, and rejected claims 11 and 25 under 35 U.S.C. 103(a) as being unpatentable over Landau in view of Hammons (United States Patent No. 6,477,509, hereinafter "Hammons"). Accordingly, Applicant respectfully provides the following:

<u>Rejections under 35 U.S.C. 102</u>

In the Office Action, the Examiner rejected claims 1-7, 12-21, 23 and 26-29 under 35 U.S.C. 102(e) as being anticipated by Landau. Applicant respectfully submits that the claim set as provided herein is not anticipated by the cited reference.

The standard for a Section 102 rejection is set forth in M.P.E.P 706.02, which provides:

> "... for anticipation under 35 U.S.C. 102, the reference must teach every aspect of the claimed invention either explicitly or impliedly. Any feature not directly taught must be inherently present."

Applicant respectfully submits that the cited reference does not teach every aspect of the amended claim set as provided herein and therefore does not anticipate the claims of the present invention. In particular, independent claims 1 recites a method of unilevel marketing and distribution, the method comprising the steps of using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is known by said potential customer and received by a seller, wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative; preparing promotional materials for distribution to said potential customer,

wherein said promotional materials include said personalized message and means for identifying said sales representative; distributing said promotional materials directly to said potential customer from a distributor; if the potential customer purchases from said promotional materials, using a computer to receive a purchase order from said potential customer, wherein said order is received by said distributor and identifies said sales representative; receive payment for said order; and distribute a portion of said received payment as a commission to said sales representative. Such limitations are supported by the application as originally filed

In contrast, Applicant respectfully submits that Landau does not teach or suggest such a method as recited in independent claim 1 as provided herein. Instead, Landau teaches:

> User computer 210 is connected to network 230 through a transmission line 215, e.g. a telephone line, T-1 line or any other suitable transmission line, via an Internet Service Provider 220. The user arrives at a referring web page 250, illustrated on the user's display monitor (not shown), via the network 230 through referral servers 240. Once at the referring web page 250, the user chooses to subscribe to a newsletter and therefore provides information, including his e-mail address, to the referring web page 250. This information, together with the unique identifying code representing the referring webmaster, is then sent to the affiliate server 260, where the information is stored in correlation with the identifying code. Alternatively, upon choosing to subscribe, the user is immediately sent to the affiliate server 260, where the user information is gathered, stored, and correlated together with the identifying code. Once the information is gathered, a tracking code is generated by the affiliate server 260. The tracking code references the user's e-mail address and its associated information, including the referring webmaster's unique identifying code.

> At a predetermined time interval-typically a day, week, or month--the affiliate server 260 generates a newsletter or e-mail, containing links embedded with the tracking code, linked to destination web pages 280, and sends it to the subscribing user's computer 210 via network 230. Upon receiving the newsletter or e-mail, the user can then visit destination web pages 280, via the links within the newsletter/e-mail, which are connected to network 230 through destination servers 270. Once there, the user can accept an offer of goods or services, thereby completing a transaction. After processing, a record of the transaction is then sent back to affiliate

server 260 where it is correlated with the information associated with the tracking code used to track the transaction.

The owner of the affiliate server can then generate a report and pay out the owners of the referral web pages 250 in accordance with the agreement between the owners of the destination pages 280. Typically, this is done on a monthly basis. Alternatively, the affiliate server 260 can automatically generate a report and send it, together with compensation, to referral servers 240, where it is stored. (see paragraphs 50-52)

Applicant respectfully submits that Landau does not teach, either explicitly or impliedly, every aspect of the claim 1 and therefore does not anticipate claim 1. In addition, dependent claims 2 – 15 place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited reference does not anticipate claims 1 – 15.

Similarly, Applicant respectfully submits that independent claim 16 includes similar limitations. And, Landau does not teach, either explicitly or impliedly, every aspect of the claim 16 and therefore does not anticipate claim 16. In addition, dependent claims 18 – 25 and 27 – 29 place further limitations on otherwise allowable subject matter. Accordingly, Applicant respectfully submits that the cited reference does not anticipate claims 16, 18 – 25 and 27 – 29.

Rejections under 35 U.S.C. 103

The Examiner rejected claims 8-10, 22 and 24 under 35 U.S.C. 103(a) as being unpatentable over Landau and rejected claims 11 and 25 under 35 U.S.C. 103(a) as being unpatentable over Landau in view of Hammons. Applicant respectfully submits that the claim set as provided herein is not made obvious by the cited reference.

The standard for a Section 103 rejection is set for in M.P.E.P 706.02(j), which provides:

To establish a *prima facie* case of obviousness, three basic criteria must be met. First there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the references or combine reference teachings. Second, there must be a reasonable expectation of success. Finally, **the prior art reference (or references when combined) must teach or suggest all the claim limitations.** The teaching or suggestion to make the claimed combination and the reasonable

expectation of success must both be found in the prior art, and not based on applicant's disclosure. *In re Vaeck*, 947 F.2d 488, 20 USPQ2d 1438 (Fed. Cir. 1991). (Emphasis added).

Applicant respectfully submits that the references cited by the Examiner do not teach or suggest the limitations claimed in the present invention. In particular, independent claims 1 and 16 as provided herein include limitations relating to methods comprising the steps of using a computer to receive a reference for a specific potential customer from a sales representative, the reference being initiated by said sales representative who is known by said potential customer and received by a seller, wherein said reference includes a message that is personalized specifically to the potential customer from said sales representative; preparing promotional materials for distribution to said potential customer, wherein said promotional materials include said personalized message and means for identifying said sales representative; distributing said promotional materials directly to said potential customer from a distributor; if the potential customer purchases from said promotional materials, using a computer to receive a purchase order from said potential customer, wherein said order is received by said distributor and identifies said sales representative; receive payment for said order; and distribute a portion of said received payment as a commission to said sales representative. These limitations are supported by the disclosure as originally filed. And, none of the references cited by the Examiner, alone or in combination, teaches or suggests such limitations.

Accordingly, Applicant respectfully submits that for at least the reasons provided herein, the references cited by the Examiner, alone or in combination, do not teach or suggest all the claim limitations of the independent claims. And, since the references cited by the Examiner do not teach or suggest each and every limitation of the independent claims, Applicant respectfully

submits that the prior art references do not make obvious the independent claims as provided herein.

And, since the prior art references do not make obvious the independent claims, Applicant respectfully submits that the prior art references cited by the Examiner do not make obvious the corresponding dependent claims, which depend from independent claims 1 or 16.
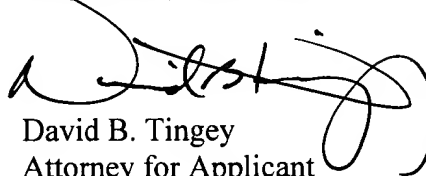
Thus, Applicant respectfully submits that for at least the reasons provided herein, the claim set as provided herein overcomes all rejections made by the Examiner in the Office Action.

CONCLUSION

Applicants submit that the amendments made herein do not add new matter and that the claims are now in condition for allowance. Accordingly, Applicants request favorable reconsideration. If the Examiner has any questions or concerns regarding this communication, the Examiner is invited to call the undersigned.

DATED this _16th_ day of December, 2005.

Respectfully submitted,

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